

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3128 of 2003
with
SPECIAL CIVIL APPLICATION No 4700 of 2003
with
CIVIL APPLICATION No 3054 of 2003
in
SPECIAL CIVIL APPLICATION No 3128 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DECEASED SHANTILAL KHUBCHAND BHOJAK THRO.HEGAL HEIRS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3128 of 2003
MR DP KINARIWALA for Petitioner No. 1
DS AFF.NOT FILED (R) for Respondent No. 1,3-5
MR HS MUNSHAW for Respondent No. 2
MR YADAV for MR PRANAV V SHAH for Respondent No. 6
2. Special Civil Application No.4700 of 2003
MR DP KINARIWALA for Petitioner
MR RV DESAI, Ld. AGP for Respondent No.1
MR HS MUNSHAW for Respondent No.2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 02/05/2003

ORAL JUDGEMENT

1. Since Special Civil Application No.3128 of 2003 is already admitted, Special Civil Application No.4700 of 2003 is also admitted as both are arising against the common order. The learned advocates appearing for the respective parties waives service of notice of rule. With the consent of the parties, the matters are taken up for final hearing.

2. The short facts of the case are that the petitioner of Special Civil Application No.3128/2003 had approached the Taluka Development Officer (TDO) for staying of the auction of the plot of certain lands which as per his contention belongs to him, whereas, as per the contention of Mr.Yadav appearing for the persons who purchased the property belongs to Gam Tal situated at village Vadgam. It appears that on 26.5.000, the TDO at the instance of the petitioner of Special Civil Application No.3128/03 granted stay for postponement of the auction. The case of the petitioner is that, inspite of the said order of TDO, the Sarpanch of the Gram Panchayat proceeded for auction and the land is sold to Mr.Yadav's client at the price of Rs.3040/- namely Sunsara Sarifbhai Vajirbhai. The contention of the petitioner is that the petitioner was not at all aware about the said so-called auction, and the contentions of the petitioner as well as of Mr.Rathod's client who is petitioner of Special Civil Application No.4700/03 are that as such there was no genuine auction and the proceedings are drawn by the Sarpanch and both the petitioners were not aware about the same.

3. It appears that the District Development Officer (DDO) has passed the order on 1.7.2000 whereby the sale is confirmed. However, the pertinent aspect is that, in the order passed for the confirmation of the sale, there is a reference to the objection filed by petitioner Shri Bhojak, and he has recorded that no sufficient evidence was produced for claiming the ownership of the land in question and, therefore, the said aspect is not considered. The contention of the petitioner is that he was not aware about the same and the petitioner has produced the documents by way of letter dated 10.7.71 read with the payment of the amount of Rs.1,762.50p/- by way of receipt showing that the payment was made. It has been submitted by the petitioners that the land belonging

to him ad-measuring 94.2 sq.yards bearing Survey No.660 was allotted and the possession was regularised of him. The contention of the petitioner is that the land which was allotted to him for which he has already paid the price by way of Kabja Haq is said to be disposed of by public auction, but, since he was not aware about the proceedings before the DDO nor the DDO at any point of time issued notice calling upon him to produce the evidence, the documents could not be produced and he submitted that the order passed by DDO is without giving opportunity and is in breach of principle of natural justice. It is also the contention of petitioner that when the land is belonging to him, it could not have been disposed of by public auction and, therefore, the proceedings of the sale and its confirmation thereof are void.

4. The petitioner preferred revision before the Secretary, Revenue Department, in Revision No.71/2000 and it is the case of the petitioner that the Secretary as per the order dated 4.2.2003 dismissed the revision application without giving opportunity of hearing and, therefore, under these circumstances the present petition.

5. So far as the petitioner of Special Civil Application No.4700/03 is concerned, namely, Mr.Rathod's client, he is the resident of village Vadgam and he is interested to purchase the land. The contention of the petitioner is that, as such, the proceedings of the auction shown, are not genuine and bogus and no auction was at all held, but, in his submission the Sarpanch of his own in collusion with the respondent No.3 Sunsara Sarifbhai Vajirbhai has drawn the proceedings. Therefore, the petitioner being one of the person interested to purchase the land, and since no opportunity was given to him to participate the auction, had also challenged the order of the DDO for confirmation of the sale by preferring revision application No.46/2000 and the said revision also came to be simultaneously dismissed as per the order dated 4.2.03. But so far as present the petitioner is concerned, it is recorded by the Secretary that it appears to the public interest appeal and therefore since the revision was dismissed, the present petition.

6. On behalf of the respondent District Panchayat, Mr.Munshaw has no instruction nor any affidavit in reply has been filed. There is no documentary evidence produced on record on behalf of the District Panchayat or by the DDO to show that the opportunity was given to Shri

Bhojak for producing the documentary evidence regarding the ownership of the land in question.

7. Mr.R.V.Desai, learned AGP appearing for the Secretary has supported the order. However, since the Secretary has acted as a quasi judicial authority, the matter is left to the Court.

8. I have heard Mr.Kinariwala as well as Mr.Rathod for the respective petitioners and Mr.Munshaw for the District Panchayat and Mr.Yadav appearing for Mr.Pranav Shah for the auction purchaser who is respondent in both the petitions. Mr.Kinariwala during the course of his argument has fairly submitted that if the land is belonging to the petitioner and is sold by auction then only the petitioner will have objection and the petitioner would not object to any other land being sold by public auction may be to the person who has purchased the property to anyone else.

9. Having considered the above and perusal the order of the DDO shows that there is a reference to the objection filed by Shri Bhojak. However, as observed earlier, no documentary proof is produced before this Court to show that any expressed intimation was given to the petitioner of Special Civil Application No.3128/03 to produce the necessary evidence or the requisite evidence for establishing the ownership right over the land in question.

9.1 However, it also appears that there was an order of the TD0 for postponement of the auction. The DDO while confirming the sale has taken into consideration the representation made by TD0 but there is no expressed discussion regarding holding of the auction by Sarpanch inspite of the stay order by TD0. In any event, if the land belongs to the petitioner of Special Civil Application No.3128/03, then naturally there was no question of holding the auction nor consequently there was any question of confirming the sale. But, since the DDO has not given opportunity to the concerned petitioner, I find that at this stage it is not necessary to examine the other aspects since the order of the DDO cannot be maintained on account of the breach of principle of natural justice, and more particularly, an opportunity is not given to the person who is claiming ownership over the land which is proposed to be disposed of by the auction.

10. As regards the contention of both the learned advocates appearing for the petitioner on the question of

genuineness of auction or that the proceedings are only drawn, and as such no public auction is held, in my view, is a disputed question of fact. It does appear from the order of the DDO that he had no opportunity to examine the said contention because as such it appears that nobody has filed the objection on such aspect. It is true that in the order there is a reference to the procedure followed by the Sarpanch on 30.5.2000 for holding of the auction but whether such proceedings drawn are genuine or bogus is a question which will have to be examined by the DDO if the petitioner of Special Civil Application No.4700/03 is serious and genuine about their own offer to purchase the land in question. As such, the present proceedings of the auction shows that the price procured is about six times then the upset price because the upset price was fixed at Rs.500/whereas the price procured out of the auction is fixed at Rs.3040/- Normally, when the public auction takes place all eligible persons would be entitled to participate and petitioner of Special Civil Application No.4700/03 has not produced any documentary evidence to show that he had submitted offer for purchase of the land. Upon the inquiry made to Mr.Rathod, learned advocate appearing for the concerned petitioner to show that whether the petitioner would be interested to deposit the amount at the rate of Rs.3040/per sq.mt. or the amount which is deposited by Sunsara Sarifbhai Vajirbhai for participating in the auction, if the DDO ultimately decides to re-auction the property after finding that the proceedings of the auction were bogus or not genuinely drawn. However, Mr.Rathod, learned advocate appearing for the petitioner submitted that the petitioner would not be agreeable to pay the full amount at the rate of Rs.3040/- for becoming eligible to participate in the auction but he submitted that he can not make statement to deposit the full amount at the rate of Rs.3040/- per sq.mt. for showing the bonafide of the petitioner but his client would be agreeable for depositing the reasonable amount which may be fixed by the Court.

11. In normal circumstances, I would have accepted the request of Mr.Rathod to participate at the auction on fulfilling the conditions which was provided at the time when auction was to be held for the first time since all citizens would be entitled to participate but because of the peculiar facts and circumstances that the auction has already been held and not only that but six times of the upset price is procured out of that auction. Therefore, unless the genuineness regarding the offer made by Mr.Rathod is fully tested, it may result into putting the whole clock back and it may also result into putting

undue damage to the public revenue and to the purchaser of the property as per whom the proceedings of the auction are genuine and he has lawfully purchased the property. If without condition of fully testing the bonafide of petitioner of Special Civil Application No.4700/2003, the DDO is directed to examine the genuineness of the auction and if in case DDO finds that the auction proceedings be quashed and property be re-auctioned, as the consequence the respondent No.3 may claim the refund of the amount at the rate of Rs.3040/per sq.mt. and at the denovo auction he may or may not participate. In such situation if offer goes below Rs.3040/- per sq.mt. public revenue would suffer. At that time if offer of the petitioner is there by depositing the amount, the land would fetch the minimum of that amount at the rate of Rs.3040/- per sq.mt. but if there is no such offer, the authorities may be compelled to sale the land at a price less than Rs.3040/per sq.mt. Therefore, in my view, the petitioner of Special Civil Application No.4700/03 though may be one who is interested to purchase the land should not be allowed to intervene the proceedings before the DDO unless he fulfills the conditions stated hereinafter. If such conditions are not provided to such type of petitioner, in my view, it would result into creating the hurdle, without sharing the burden in the event of cancellation of the auction or otherwise. Hence judicial discretion demands that he should be put to terms before his challenge is further examined.

12. Since the Secretary of the State Government has also not examined the aforesaid aspects, and in my view, when the order came to be passed without giving opportunity to the petitioners, no useful purpose would be served in remanding the matter before the Secretary, Revenue Department, because, as observed earlier, while passing the first order by DDO, principle of natural justice are not complied with and, therefore, considering the present facts and circumstances of the case, I am of the view that it is more better that the DDO gives opportunity to the party concerned and decides the matter afresh for confirmation of the sale or otherwise as stated hereinafter.

13. In view of the aforesaid discussions, the order of the DDO dated 1.7.2000 and its confirmation thereof by the Secretary, Revenue Department, are quashed and set aside on the point of breach of principle of natural justice and the other relevant circumstances and it is further directed that the DDO shall consider the matter as observed hereinafter.

- (1) The DDO shall give the opportunity of hearing to the petitioner of Special Civil Application No.3128/03 to produce the documentary evidence or any other evidence known to law for showing that the land is belonging to the petitioner and is in lawful possession of the petitioner. Mr.Kinariwala has stated that the petitioner shall produce the necessary documents within period of 20 days from the date of intimation. The DDO shall decide the question regarding the actual location of the land, and if it is found by him that if the lands belongs to the petitioner then as a consequence thereof the proceedings of the auction shall stand cancelled and at that time it will be open to the DDO to pass the consequential order of refunding the amount to the purchaser of the property at the auction.
- (2) If the DDO finds during the course of the inquiry that the land which is proposed to be sold by auction is a different land then that of the ownership of the petitioner of Special Civil Application No.3128/03, then he shall consider the question regarding the genuineness of the auction and while considering the said aspect he may also consider the question regarding re-auctioning of the property only if the petitioner of Special Civil Application No.4700/03 submits his offer to purchase the land by depositing the amount which is procured by the present auction i.e. at the rate of Rs.3040/and thereafter it will be open to the DDO to decide the matter in accordance with law after taking into consideration the other relevant circumstances which are required to be considered. It is clarified that if the petitioner of Special Civil Application No.4700/03 fails to deposit the amount by submitting the offer, as observed earlier, it will be open to the DDO shall not be required to consider the matter further as having no other offer for the land in question and shall be at the liberty to proceed for confirmation of the sale by following the other aspects which may be required for the purpose of confirmation of sale.
- (3) The aforesaid exercise as directed hereinabove shall be completed by the DDO as early as possible preferably within period of two

months from the receipt of the order of this Court. Till the DDO completes the exercise and passes the final order, status-quo qua land in question shall be maintained by all the concerned parties.

Both the petitions are allowed only to the aforesaid extent. Rule made absolute accordingly. No cost.

In view of the same, Civil Application No.3054 of 2003 is also disposed of accordingly with no order as to costs.

(Jayant Patel, J.)

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